

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

v.

**No. CV 12-0685 JH/LAM
CR 09-0871 JH**

JOHN LERMA,

Defendant/Movant.

ORDER DENYING MOTION TO APPOINT COUNSEL

THIS MATTER is before the Court on Defendant/Movant's motion to appoint counsel (CV Doc. 9 and CR Doc. 92), filed on July 30, 2012. The Court has reviewed the motion and **FINDS** that the motion is not well-taken and should be **DENIED without prejudice**.

In his motion, Defendant/Movant requests the appointment of counsel in this proceeding; however, there is generally no federal constitutional right to counsel in a proceeding brought under 28 U.S.C. § 2255. *See Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987) ("We have never held that prisoners have a constitutional right to counsel when mounting collateral attacks upon their convictions, . . . and we decline to so hold today.") (citation omitted). The decision of whether to appoint counsel is left to the discretion of the Court. Ordinarily, there is no reason to appoint counsel unless the case has reached the stage of proceedings where an evidentiary hearing is required. *See, e.g., United States v. Leopard*, 170 F.3d 1013, 1015 (10th Cir. 1999). As there is no need for an evidentiary hearing in this case at this time, the Court finds that appointment of counsel is unnecessary. Therefore, the Court will deny Defendant/Movant's motion at this time.

IT IS THEREFORE ORDERED that Defendant/Movant's motion to appoint counsel (*CV Doc. 9* and *CR Doc. 92*) is **DENIED without prejudice**.

IT IS SO ORDERED.

Lourdes A. Martinez
LOURDES A. MARTÍNEZ
UNITED STATES MAGISTRATE JUDGE